IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 633 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GIRUBHA HARUBHA GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 633 of 2003

MS SUBHADRA G PATEL for Petitioner

MR NAGES SUDH AGP for Respondents

CORAM : MR.JUSTICE D.K.TRIVEDI

Date of decision: 23/05/2003

ORAL JUDGEMENT

1. The petitioner - detenu, by filing this petition, has challenged the order of detention passed by the Commissioner of Police, Rajkot City dated 22.11.2002, wherein the detaining authority, while considering the material placed before him, has recorded satisfaction that the petitioner is acting prejudicial activities to

the maintenance of public order and with a view to prevent such manner, he was satisfied that the order of detention was required and accordingly, he has passed the order of detention by resorting the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter be referred to as the "PASA Act"]. The petitioner has, along with this petition, annexed the order of detention, committal order wherein the detenu was ordered to be kept at Nadiad Jail, the grounds of detention dated 22.11.2002, the material relied upon by the detaining authority, while passing the order, detaining the petitioner under the provisions of PASA Act and two statements of the witnesses recorded by the Police on 19.11.2002 and the same were verified by the detaining authority personally on 20.11.2002 and the representation of the Advocate Ms.S.G.Patel addressed to the Police Commissioner, Rajkot City calling upon the detaining authority for supplying of various documents and requested for release him from the detention.

2. Ms.S.G.Patel, learned advocate for the petitioner, during the hearing, has taken me through the petition and the documents attached thereto including the grounds of detention, though several contentions were raised in this petition. While challenging the order of detention, Ms.Patel has placed in service only one contention that the privilege claim by the detaining authority as provided under Sub-Section (2) of Section 9 of the PASA Act is not genuine and accordingly, the order of detention has become illegal. A specific contention is taken by the petitioner at para-12 of the petition. It is the contention that there is no contemporaneous record available with the detaining authority to come to the conclusion that fear expressed by the witnesses is genuine or not, for not disclosing the names and addresses of the witnesses and the detaining authority has, accordingly, accepted the say of the witnesses without verifying the same and no contemporaneous record was available with the detaining authority and privilege claim under Sub-Section (2) of Section 9 of the PASA Act, is not genuine. Ms. Patel, in support of her submission, has placed reliance upon the decision, in the case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh Vs. Commissioner of Police, Ahmedabad and ors., reported in 1997 (1) G.L.H. 1017. As per the ratio of the said judgment, there is no contemporaneous record available with the detaining authority and the privilege claim by the detaining authority was not found to be genuine and the names and addresses of the witnesses were not disclosed. However, in the grounds of detention, the gist of the version given by the petitioner was

highlighted. In respect of the incident, is highlighted by the witnesses, there is no contemporaneous material available with the detaining authority and the privilege claim by the detaining authority was held to be vitiated and the privilege claim under Sub-Section (2) of Section 9 of the PASA Act was not found proper. Ms.Patel has, while raising this ground of detention, vehemently urged that though several grounds are taken in the petition, the order of detention be held illegal, only on this ground alone and the detenu is required to be set free from the detention.

4. Mr.Sudh, learned AGP for the respondents, has supported the order of detention and it is his contention that the contentions raised by the petitioner is not well founded and deserves to be discarded. It is his submission that the order of detention passed by the detaining authority, on considering the material placed before him including the statements of the witnesses recorded by the police, which were verified by the detaining authority himself, has recorded satisfaction that the detenu is acting prejudicial activities to the maintenance of public order, as bootlegger within the meaning of Section 2(b) of the PASA Act and with a view to prevent such manner, the order of detention was passed. It is also his contention that the statements of the witnesses recorded by the police, has in turn, stated that their names and identity may not be disclosed, as if the identity is disclosed the detenu with his associates will kill them and even the witnesses have not filed any complaint against the detenu and his associates in respect of the incident, for which they have suffered and the detaining authority himself has verified the statements of the witnesses and he has also satisfied that it would be in the public interest not to disclose the names and addresses of the witnesses and the detaining authority has rightly claimed privilege as contemplated under Sub-Section (2) of Section 9 of the PASA Act. Mr.Sudh, while arguing the matter, has also taken me through the affidavit of Shri V. V. Rabari dated 22.05.2003 and according to Mr.Sudh, the contentions raised by the petitioner is not tenable and the same is discarded and the petition filed by the petitioner be dismissed, by confirming the order of detention passed by the detaining authority.

5. Considering the submission made before me and in light of the reply affidavit filed by the detaining authority, it transpires from the grounds of detention that the detaining authority has considered six prohibition cases registered against the petitioner and

his associates and two statements of the witnesses recorded by the police on 19.11.2002 by highlighting the incident occurred on 17.05.2002 and 06.12.2002 and as per the statements of the witnesses recorded by the police, the petitioner detenu is acting prejudicial activities to the maintenance of public order and he is indulging prohibition offences. The petitioner is headstrong person and the witness has suffered at the instance of the detenu and his associates, wherein the detenu has gave threat to kill him and at the relevant time, the detenu and his associates abused flimsy word to the witness and the associates of the detenu had moved in the area with the open knife and the public order in the area was disturbed. The another incident highlighted by the witness in his statement in respect of incident occurred on 06.10.2002 and when the witness person was at his business place, the detenu coming with heavy bag and tried to hand over the said bag to the witness and the witness was inquired from him about the contents in the said bag. In reply, the detenu has stated that there is a prohibition raid and he has asked the witness to keep this material with him and when the witness has refused to keep the said bag, the detenu has kept the said bag on the counter of the witness and left the place and when the police has left the raided premises, the detenu came to take his bag and at that time, the witness has told that he will not keep such material in future, as the police carried out the raid at his premises and he being a business man, he would come in trouble. At that time, the detenu has abused by using flimsy words and catch hold the collar of the witness and slapped him. Due to this incident many people in the area were gathered and at that time, the detenu had taken a knife, which was lying there and the detenu had put the said knife on the neck of the witness and they have threat to kill him. Because of such incident at the instance of the detenu, the public order was disturbed and as the witness was continued to his business, through his uncle met the detenu and the matter was settled and because of high handed on the part of the detenu, he has not filed any complaint against him before the police and he requested that his name and address, was not to disclose. As found from the six prohibition cases registered against the detenu, two cases were pending before the Court and four cases were under investigation. The detaining authority has, while considering the material placed before him, satisfied that the detenu is acting prejudicial activities to the maintenance of the public order and the detenu is a confirmed bootlegger within the meaning of Section 2(b) of the PASA Act and with a view to prevent such activities, he has passed the order detaining the

petitioner under PASA Act. The detaining authority has, on verification of the statements of the two witnesses, recorded satisfaction that in the public interest, the names and addresses of the witnesses are not to be disclosed and he has claimed privilege as provided under Sub-Section (2) of Section 9 of the PASA Act.

6. As found from the reply affidavit filed by Shri Rabari dealing with the contentions raised in the petition about the privilege claim by the detaining authority by not disclosing the identity of the witnesses in para-12 of the petition, the detaining authority, has in para-10 of the reply affidavit, has averred that after carefully scrutinising, examining and considering the materials placed before him and on personally verifying the genuineness, correctness and veracity of the incidents narrated in the statements of the witnesses in respect of unregistered offences, he has called the witnesses personally to his office and after satisfying himself that the fear expressed and the apprehension made by them is found to be quite, real, proper, genuine and reasonable and after applying his mind to the facts of the case, he was subjectively satisfied that if the names, addresses and other particulars of the witnesses are disclosed to the detenu, their lives and properties will be in danger and accordingly, he has privilege claim under Sub-Section (2) of Section 9 of the PASA Act.

7. In light of the above affidavit filed by the detaining authority in reply to the contentions raised in the petition and in view of the decision in the case of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh [supra] is squarely covered with the present case and as there is no material is produced before me, which shows that any contemporaneous material is with the detaining authority in respect of the version given by the witnesses for which the public order was disturbed at the relevant time in the area. On the similar point and relying upon the decision of Mohmad Sarif @ Kalio Nurmohmadsarnibapu Shaikh [supra], I have accepted the contention and allowed the petition filed by the detenu - Jayesh alias Jago Manjibhai Dabhi, while deciding Special Civil Application No.12491 of 2002 and considering the facts of the present case as discussed hereinabove, there is no contemporaneous material with the detaining authority and the privilege claim by the detaining authority by not disclosing the names and addresses of the witnesses, is found not to be genuine and the order of detention only on that ground deserves to be set aside and accordingly the order of detention is required to be quashed and set aside.

7. In light of the aforesaid decisions, the petition is allowed. The impugned order dated 22.11.2002 passed by the Commissioner of Police, Rajkot City is quashed and set aside. The detenu Girubha Harubha Gohil is ordered to be released forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[D.K.Trivedi,J.]

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